

ADMINISTRATIVE RULES SUMMARY

TO: Medical Care Advisory Committee
FROM: Medicaid Policy
DATE: November 21, 2016
RE: He-W 520 General Program Information and Provider Requirements (Fingerprinting)

1. Status:

- Rule emailed to MCAC on November 28, 2016.
- **Rule requested to be on consent. MCAC deadline to request a DHHS presentation is December 5.**

2. Target Dates:

- **Rule presented to MCAC (if requested):** December 12, 2016
- **JLCAR:** February 17, 2017

3. Rule Summary:

- **Reason for rulemaking (e.g., expiration, statutory change, policy change).**

The Affordable Care Act (ACA) requires, as a component of provider and supplier screening, that certain Medicaid providers and provider applicants undergo a fingerprint related criminal background check.

The rule is currently in interim status, expiring on April 30, 2017. This proposal is a regular rule which proposes no changes to the interim rule.

- **General overview of the rules.**

He-W 520 describes general program information and requirements on providers. The proposal describes the requirements on providers and provider applicants for fingerprint related criminal background checks in accordance with Section 6401(b) of the Affordable Care Act and 42 CFR Part 455, Subpart E.

- **Description of the specific changes being proposed to the rule.**

No changes are being proposed to the rule

- **Description of who is affected generally by the rule; and who is impacted by the specific changes (e.g., Medicaid beneficiaries and/or providers).**

This rule affects certain Medicaid providers and provider applicants who are considered to be high risk, and persons with a direct or indirect ownership interest in high risk entities.

- **Description of any specific eligibility changes.**

No changes to eligibility.

- **Description of any fiscal impact to recipients, providers, or the State of New Hampshire.**

There is no fiscal impact on recipients. Certain providers, provider applicants and those with an ownership interest as defined in the rule will be required to pay to the Department of Safety a cost of approximately \$47 for fingerprinting.

4. Issues of Concern: None.

5. Department Contacts:

- Diane Peterson, Medicaid Policy, 271-4367, diane.peterson@dhhs.nh.gov
- Tashia Blanchard, Administrator, Office of Improvement and Integrity, 271-8763, tashia.blanchard@dhhs.nh.gov
- Michael Holt, Rules Coordinator, Administrative Rules Unit, 271-9234, michael.holt@dhhs.nh.gov

Please send all comments (including specific language changes) to: diane.peterson@dhhs.nh.gov

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 520 GENERAL PROGRAM INFORMATION AND PROVIDER REQUIREMENTS

Amend He-W 520.01, effective 11/1/16 (Document #12023), by inserting new paragraphs (b), (d), (e), (j), (m), and (n), and renumbering subsequent paragraphs, cited and to read as follows:

He-W 520.01 Definitions.

(b) “Direct ownership interest” means the possession of equity of 5% or greater in capital, stock, or profits of the provider or provider applicant.

(d) “High risk provider or high risk provider applicant” means an individual or entity which meets one of the criteria in He-W 520.06(c).

(e) “Indirect ownership interest” means an ownership interest of 5% or greater in an entity that has a direct ownership interest in the provider or provider applicant.

(j) “Provider applicant” means an individual or entity who is undergoing the provider enrollment or re-enrollment process to become a New Hampshire medicaid provider.

(m) “Revalidation” means the process through which the provider verifies the accuracy of, and updates if necessary, its current provider enrollment information.

(n) “Termination” means that the department revoked a provider’s medicaid billing privileges.

Readopt He-W 520.06, effective 11/1/16 (Document #12023), to read as follows:

He-W 520.06 Provider Requirements.

(a) NH medicaid providers and provider applicants shall meet the provider participation requirements contained in He-W 530 through He-W 577, as applicable, for providers of the type of services they will be providing, as well as requirements in He-W 520.06.

(b) The following individuals and entities shall be subject to a risk determination described in (c) below:

- (1) NH medicaid providers enrolled as of November 1, 2016 who submitted their provider enrollment application to the department’s fiscal agent on or after August 1, 2015 through October 31, 2016;
- (2) NH medicaid provider applicants;
- (3) NH medicaid providers who are applying to enroll a new practice location(s);
- (4) NH medicaid providers who are re-enrolling; and
- (5) NH medicaid providers being revalidated in accordance with 42 CFR 455.414.

(c) Individuals and entities in (b) above who meet either of the following criteria shall be determined to be high risk providers or high risk provider applicants:

(1) The individual or entity, with the exception of those who are undergoing revalidation in accordance with 42 CFR 455.414, provides home health services or durable medical equipment services; or

(2) The individual's or entity's risk level was adjusted to high by the department as required by 42 CFR 455.450(e)(1) because any of the following occurred:

a. The department imposed a payment suspension on the individual or entity based on credible allegation of fraud, waste, or abuse;

b. The individual or entity has an existing medicaid overpayment;

c. The individual or entity was excluded from participation in a federally funded program by the office of inspector general or another state's medicaid program within the 10 years preceding the date of application or date of revalidation; or

d. In accordance with 42 CFR 455.450(e)(2), NH medicaid or the Centers for Medicare and Medicaid Services (CMS) in the previous 6 months lifted a temporary moratorium for the particular provider type and a provider that was prevented from enrolling based on the moratorium applies for enrollment as a provider within 6 months from the date the moratorium was lifted.

(d) The following individuals and entities shall be subject to a state and federal criminal background check, including fingerprinting, in accordance with this section:

(1) Persons with a direct or indirect ownership interest in a high risk provider or high risk provider applicant described in (c)(1) above; and

(2) High risk providers or high risk provider applicants described in (c)(2) above.

(e) Those who meet the criteria in (d) above shall not be subject to an additional criminal background check, including fingerprinting, if, within the previous 36 months, they have undergone a criminal background check as required by:

(1) A Medicare administrative contractor;

(2) NH medicaid;

(3) Any other state's medicaid agency, and the department is able to access the information from the other state's medicaid agency; or

(4) Any other state's children's health insurance program (CHIP), and the department is able to access the information from the other state's CHIP.

(f) Those who meet the criteria in (d) above, and who are not excluded in (e) above, shall be notified in writing of the following by the department:

(1) That a state and federal criminal background check, including fingerprinting, is required;

(2) Where the criminal background check, including fingerprinting, can be conducted as specified in (h)(1) below; and

(3) The deadline by which the criminal background check, including fingerprinting, shall be conducted as specified in (g) below.

(g) The deadline for undergoing a criminal background check, including fingerprinting, shall be 30 days from the date of the notification in (f) above.

(h) Those who meet the criteria in (d) above, and who are not excluded in (e) above, shall undergo a state and federal criminal background check by:

(1) Having a complete set of electronic fingerprints taken at any location maintained by the NH state police criminal records unit that has electronic fingerprinting capability, or by any other in or out of state law enforcement agency that conducts fingerprinting electronically; and

(2) Submitting to the location in (1) above a completed, notarized Form #DSSP 417, "New Hampshire Health and Human Services Criminal History Record Information Authorization," which authorizes the release of the individual's criminal history record, if any, to the department.

(i) Those who meet the criteria in (d) above shall be terminated from, or denied enrollment in, the NH medicaid program if:

(1) The individual fails to get fingerprinted by the deadline in (g) above, as applicable; or

(2) The results of the criminal background check indicate that the individual has been convicted of any of the following federal or state felony offenses within the 10 years preceding the date of application or date of revalidation of enrollment:

a. Felony crimes against persons, such as murder, sexual assault, assault, interference with freedom, destruction of property, unauthorized entries, robbery and theft, fraud and corruption, and other similar crimes for which the individual was convicted, including guilty pleas;

b. Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud, and other similar crimes for which the individual was convicted, including guilty pleas; or

c. Any felony that placed the medicaid program or its recipients at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

(j) An individual or entity being terminated from, or denied enrollment in, the NH medicaid program in accordance with (i) above shall receive a written notice from the department of the denial or termination.

(k) The notice in (j) above shall contain:

(1) The reason for, and legal basis of, the denial or termination; and

(2) Information that an appeal of the denial or termination may be requested, in accordance with He-C 200, within 30 calendar days of the date on the notice of the denial or termination.

(l) Appeals of the results of the criminal background check shall be made in accordance with the department of safety rules at Saf-C 5703.12.

APPENDIX B

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-W 520.01 (b), (d), (e), (j), (m), and (n)	42 CFR 433, Subpart C; Section 1920A of the SSA; 42 USC 1396a(a)(10); 42 USC 1396d(a); 42 CFR 455; 42 CFR 457
He-W 520.06	42 U.S.C. 1395cc(j)(2); 42 CFR 433.139; 42 CFR 424; 42 CFR Part 455; RSA 161:4-a,X; 42 U.S.C. 1396a(a)(77); 42 U.S.C. 1396a(kk) ; RSA 126-A:5, VIII